

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

GEORGIA CAMPBELL

PLAINTIFF

VS.

CIVIL ACTION NO. 4:05CV115LN

BOARD OF TRUSTEES OF THE QUITMAN  
SCHOOL DISTRICT AND CHARLES W.  
SHEPHERD, SUPERINTENDENT IN HIS  
OFFICIAL CAPACITY AND INDIVIDUALLY

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This cause is before the court on the motion of defendants Quitman School District and Charles W. Shepherd for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Plaintiff Georgia Campbell has responded to the motion and the court, having considered the memoranda of authorities, together with attachments, submitted by the parties, concludes that the motion is well taken and should be granted.

Plaintiff Georgia Campbell was in her second year of employment with the Quitman School District when she received notice in April 2004 that the superintendent recommended that her contract not be renewed for the following year. After a hearing, held in plaintiff's absence, the School Board adopted the superintendent's recommendation of non-renewal, and in an opinion dated July 5, 2005, the Clarke County Chancery Court affirmed the Board's decision. One week later, on July 11, 2005, Campbell

filed the present action alleging claims under state law for breach of contract and under federal law, specifically 42 U.S.C. § 1983, for alleged violation of her rights to due process based on the District's alleged failure to provide her with proper notice of the non-renewal hearing and conducting the hearing in her absence, thus depriving her of the opportunity to be heard.<sup>1</sup> Defendants have moved for summary judgment, contending that because the issues raised by plaintiff's claims herein have been decided against her, both by the Clarke County Chancery Court and by the Mississippi Employment Security Commission, plaintiff's claims are barred by collateral estoppel and/or res judicata.

Although public school teachers in Mississippi have no right to reemployment in successive school years, they do have certain procedural rights. Specifically, under the Mississippi Education Employment Procedures Law, Miss. Code Ann. § 37-9-101 -113, a public school teacher employed by a local school district for a continuous period of two years is entitled to certain procedural protections in the event the district proposes that the teacher not be reemployed for the succeeding school year. The grounds for nonrenewal and the procedures to be followed are outlined in the Act, which states:

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<sup>1</sup> Although plaintiff's complaint contains a reference to violation of her right to equal protection, she alleges no facts in support of such a claim.

It is the intent of the legislature to establish procedures for providing public school employees notice of the reasons for not offering an employee a renewal of his contract, to provide an opportunity for the employee to present matters in extenuation or exculpation to enable the Board to determine whether the recommendation of non-employment is a proper employment decision and not contrary to law, and not to establish a system of tenure or require that all decisions of nonreemployment be based upon cause with respect to employment in the school district.

Under the Act, "[i]f a recommendation is made by the school district not to offer an employee a renewal contract for a successive year, written notice of the proposed nonreemployment stating the reasons for the proposed nonreemployment" is required to be given on or before April 15. Miss. Code Ann. § 37-9-105.

Upon timely written request of the employee, the employee is entitled to

- (a) Written notice of the specific reasons for nonreemployment, together with a summary of the factual basis therefor, a list of witnesses and a copy of documentary evidence substantiating the reasons intended to be presented at the hearing, which notice shall be given at least fourteen (14) days prior to any hearing.

. . . ;

- (b) An opportunity for a hearing at which to present matters relevant to the reasons given for the proposed nonreemployment, including any reasons alleged by the employee to be the reason for nonreemployment;

- (c) Receive a fair and impartial hearing before the board or hearing officer;

- (d) Be represented by legal counsel, at his own expense.

If the employee requests a hearing, she is required to

provide the district, not less than five (5) days before the scheduled date for the hearing, a response to the specific reasons for nonreemployment, a list of witnesses and a copy of documentary evidence in support of the response intended to be presented at the hearing.

If the employee fails to provide this information, then the recommendation of nonreemployment shall be final without the necessity of a hearing.

Miss. Code Ann. § 37-9-109. If one is requested, the Board must schedule a hearing before the Board or an impartial hearing officer and notify the employee in writing of same. Miss. Code Ann. § 37-9-111(1). The statute states that at the hearing, "[t]he district shall present evidence . . . in support of its recommendation for nonreemployment," and that,

[t]he employee shall be afforded an opportunity to present matters at the hearing relevant to the reasons given for the proposed nonreemployment determination and to the reasons the employee alleges to be the reasons for nonreemployment and to be represented by counsel at such a hearing. Such hearing shall be conducted in such a manner as to afford the parties a fair and reasonable opportunity to present witnesses and other evidence pertinent to the issues and to cross-examine witnesses presented at the hearing.

Miss. Code Ann. § 37-9-111(3). In the event the hearing is held before a hearing officer, the Board must consider the record of the proceedings and report of the hearing officer, and determine based solely thereon "whether the proposed nonreemployment is a proper employment decision, is based upon a valid educational reason or noncompliance with school district personnel policies . . . and shall notify the employee in writing of its final decision and reasons therefor." Miss. Code Ann. § 37-9-111(5). "If the matter is heard before a hearing officer, the board shall also grant the employee the opportunity to appear before the board to present a statement in his own behalf, either in person or by his

attorney, prior to a final decision by the board." Id. The employee has the right to appeal an unfavorable decision to the chancery court, and then to the state supreme court.

Campbell was hired in August 2002 by the Quitman School District as a fifth grade teacher with Quitman Upper Elementary School. Her contract was renewed for the 2003-2004 school year; however, by letter dated April 7, 2004 from Dr. Charles Shepherd, District Superintendent, Campbell was notified that her contract would not be renewed for the 2004-2005 school year.<sup>2</sup> Upon receipt of the letter, Campbell requested a hearing, and was notified by Dr. Shepherd by letter dated April 23, 2004 that a hearing was scheduled for Monday, May 10, 2004 at 9:00 a.m. at the District's Central Office before a hearing officer. On the same day, April 23, a separate letter was hand-delivered to Campbell in her classroom by Principal Angie McHenry detailing the factual basis for the District's non-renewal decision, and listing potential witnesses (with their anticipated testimony) and documentary evidence expected to be presented at the hearing. Three days later, however, on April 26<sup>th</sup>, Campbell submitted her handwritten resignation to Assistant Superintendent James Morgan, asking that

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<sup>2</sup> The notice gave the following reasons for nonrenewal:

- . Unprofessionalism
- . Failure to comply with plan of improvement
- . Administration's lack of confidence in your ability to perform in the classroom
- . Poor rapport with administration and staff.

her resignation be considered effective immediately. Campbell reported in her letter of resignation that when Principal McHenry had come to deliver the District's explanation of its nonrenewal decision, McHenry had "snatched [Campbell's] bookbag, knocking [her] off balance," and Campbell, upset by this encounter, advised that with sincere regrets, she was "resigning from my 5<sup>th</sup> grade teaching position at Quitman Upper Elementary School." Campbell did not thereafter return to work.

Despite this turn of events, on May 6, attorney Linda Hampton wrote to Dr. Shepherd that she would be representing Campbell at the hearing on May 10. The District's attorney, Robert Compton, responded with a letter informing Hampton that Campbell had failed to timely provide the District with her responses to the District's statement of reasons for non-renewal, and its list of witnesses and documents for the hearing, as required by the Mississippi Code Annotated § 37-9-109, and that as a result, "the recommendation of non-reemployment is final without the necessity of a hearing." He further wrote that in case Hampton was not already aware, Campbell had already tendered her resignation of employment and effectively abandoned her employment.

The following day, Hampton wrote a letter responding to Compton's letter in which he had "effectively cancel[led] Mrs. Campbell's hearing" scheduled for May 10. Hampton wrote that Campbell had not provided the information required by statute

because she was unaware that this was required, having never been provided any type of handbook outlining the grievance procedure afforded her and having first learned of those procedures on May 5, a mere five days before the scheduled hearing. Hampton wrote, "Mrs. Campbell requests that her hearing be conducted as scheduled."

What happened next is in dispute. The District maintains that John Compton, Robert Compton's law partner, telephoned Hampton on May 7 and told her the hearing would go forward as scheduled on May 10; Hampton contends no such conversation ever occurred and has provided an affidavit so stating and claiming further that not until May 19, when she received a letter informing her of the Board's decision to accept the recommendation for non-renewal, did she become aware that the District had proceeded with the hearing on May 10 in Campbell's absence.

After receiving this letter, Hampton wrote to Robert Compton complaining that her client had not been given notice of the hearing. By letter dated July 6, Robert Compton informed Hampton that the Board had scheduled a special meeting for July 13 to consider Campbell's appeal of the administration's recommendation for non-renewal, and provided her a copy of the transcript and exhibits from the May 10<sup>th</sup> hearing. Hampton wrote back inquiring whether the Board was planning to hold a hearing or merely a meeting of the hearing and exhibits. The Board's attorney

responded that the Board would hold a meeting, at which Campbell would be given the opportunity to appear and present a statement in her own behalf in person or through her attorney prior to a final decision. Campbell, through her attorney, declined to attend the meeting, taking the position that she was being wrongly placed in the position of "pleading for her employment in a simple statement as opposed to being afforded the full hearing to which she is entitled by law." The Board conducted its special meeting on July 13, and affirmed the decision not to renew Campbell's contract.

Campbell appealed the finding of the Board to the Clarke County Chancery Court. In a July 5, 2005 opinion affirming the Board's non-renewal decision, the chancellor expressly found that plaintiff had voluntarily resigned her employment with the District on April 26, 2004, and did not thereafter return to work or withdraw her resignation; that plaintiff was given proper notice of the non-renewal hearing by Dr. Shepherd on April 23<sup>rd</sup>; that plaintiff failed to timely respond to defendant's reasons for non-renewal, as required by statute; that the non-renewal recommendation became final by operation of law based on Campbell's resignation and her non-compliance with the statute; that despite the finality of the non-reemployment decision, the hearing went forward as scheduled on May 10; that plaintiff received notice that the hearing would go forward through her



attorney's conversation with John Compton on May 7, 2004; that her contention that she was not given proper notice of the hearing was without merit and that her due process rights were not violated; and that the Board's determination to uphold the non-renewal was supported by substantial evidence and was not arbitrary or capricious and that no statutory or constitutional right of Campbell was violated.

In this action, Campbell asserts claims for breach of contract and for violation of her due process rights, both of which appear to be based on the same factual premise, namely, that the District failed to notify her that the hearing on the superintendent's non-renewal recommendation had been rescheduled thereby depriving her of her right to attend the hearing and "present matters at the hearing relevant to the reasons given for the proposed nonreemployment determination." Defendants submit in their motion that both claims are barred by collateral estoppel and/or res judicata and that the claims are without merit, in any event. The court concludes that these claims are indeed barred by collateral estoppel, and therefore finds it unnecessary to reach defendants' further arguments.<sup>3</sup>

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<sup>3</sup> Having said that, it is apparent that plaintiff's putative breach of contract claim is without merit. Plaintiff's only allegation in the complaint in support of her breach of contract claim is that the District breached her contract for the 2003-2004 school year by failing to give her the required statutory notice of the date and time of the hearing on its decision to not renew plaintiff's employment for the succeeding

Under the Full Faith and Credit Act, 28 U.S.C. § 1738, federal courts must give the same preclusive effect to state court judgments that those judgments would receive in the courts of the state from which the judgments emerged. Raju v. Rhodes, 7 F.3d 1210, 1214 (5<sup>th</sup> Cir. 1993). Thus, under federal law, "issues actually litigated in a state court proceeding are entitled to the same preclusive effect in a subsequent federal § 1983 suit as they enjoy in the courts of the state where the judgment was rendered." Allen v. McCurry, 449 U.S. 90, 96, 101 S. Ct. 411, 415, 66 L. Ed. 2d 308 (1980). Mississippi recognizes the doctrine of collateral

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(2004-2005) school year. This would not constitute breach of her employment contract, despite a general provision in the contract stating that the contract was "subject to all policies, resolutions, rules and regulations of the employer and the laws of the State of Mississippi."

Plaintiff also argues in response to defendants' motion that the contract was breached by defendant's failure to have two evaluation instruments (performance appraisals) completed on teachers annually, which was not done in plaintiff's case. No such allegation appears in plaintiff's complaint, and the only evidence submitted by plaintiff in support of this putative "policy" does not contain any requirement of two annual evaluations and in any event recites the Board's intention "that the written policies serve as guides for the discretionary action of those to whom it delegates authority and as a source of information for all persons who are interested in, and affected by, the district schools." The alleged policy, therefore, does not grant the plaintiff any right to two annual evaluations.

Plaintiff's claim against Superintendent Shepherd, to the extent he is sued in his individual capacity, must fail. Plaintiff's only claim herein is that the District failed to notify her that the May 10 hearing would be held as originally scheduled, notwithstanding a May 6 letter from Robert Compton purporting to cancel the hearing. There is neither allegation nor proof that Shepherd was personally involved in this alleged omission.

estoppel, and holds that "where a question of fact essential to a judgment is actually litigated and determined by a valid and final judgment, that determination is conclusive . . . [against the party against whom it is made] in a subsequent suit on a different cause of action." Garraway v. Retail Credit Co., 244 Miss. 376, 385, 141 So.2d 727, 730 (1962); see also Dunaway v. W.H. Hopper & Assocs., 422 So. 2d 749, 751 (Miss. 1982) (under Mississippi law, a party is precluded from "relitigating a specific issue actually litigated, determined by, and essential to the judgment in a former action, even though a different cause of action is the subject of the subsequent action").

Collateral estoppel applies under Mississippi law where four requirements are met: "(1) the plaintiff is seeking to relitigate a specific issue; (2) the issue was already litigated in a prior action; (3) the issue was actually determined in the prior action; and (4) the determination of the issue was essential to the judgment in the prior action." Raju v. Rhodes, 809 F. Supp. 1229, 1236 (S.D. Miss. 1992).

In response to defendants' motion, plaintiff argues that collateral estoppel does not apply because there has been no prior adjudication on the merits of the issue sought to be litigated in this cause, that issue being whether plaintiff's due process (and/or contractual) rights were violated when the District conducted the hearing on her non-renewal without giving her notice

and an opportunity to be heard. More to the point, she argues that collateral estoppel does not apply because that particular issue "has not been previously adjudicated in a hearing on the merits." (Emphasis added). Plaintiff reasons that the only hearing on the merits that was conducted in the state proceeding was the May 10<sup>th</sup> administrative hearing on the non-renewal of her contract; and since the issue presented in this case is whether that hearing itself violated her due process and/or contract rights, this issue could not possibly have been litigated at the hearing. Plaintiff's argument is misguided.

Defendants do not contend that the issues presented here were litigated at the School Board hearing. Rather, their position is that the issues were litigated and decided on plaintiff's appeal of the School Board's decision to the Chancery Court, where the issues here presented were clearly litigated (plaintiff assigned as alleged error the District's failure to provide her with due process) and was decided against plaintiff.

Plaintiff argues additionally and/or alternatively that the Chancery Court's ruling cannot have preclusive effect because the appeal was "only a narrow review, limited to the board's decision and the record before the hearing officer" and "in no way was litigation on the merits of the constitutional violation claims raised in this court." Her position is without merit. A similar

argument was raised and rejected in Gates v. Walker, 865 F. Supp. 1222 (S.D. Miss. 1994), where the court held that a teacher's § 1983 claims were barred by collateral estoppel and res judicata based on the decision of the chancery court on the teacher's appeal of a school board decision. The court observed that while the plaintiff's § 1983 claim could not have been raised in the state court proceeding, res judicata/collateral estoppel nonetheless applied "since the rights alleged to have been infringed and the underlying factual circumstances presented to this court are the same." Id. at 1238. See also Moses v. Flanagan, 727 F. Supp. 309, 310-11 (N.D. Miss. 1989) (holding that chancery court's ruling that teacher's due process rights were not abridged at school board's hearing on non-renewal decision was entitled to preclusive effect in teacher's subsequent § 1983 lawsuit where issues before chancellor included whether the hearing officer's decision violated any constitutional right of the employee and where the constitutional claims raised in the subsequent federal lawsuit were identical to those presented to the chancellor).

Although it is true, as plaintiff points out, that state law provides only for "limited review" by the Chancery Court of a school board's non-renewal decision, that review extends to the question whether the decision is "[i]n violation of some statutory or constitutional right of the employee." Here, it is clear to

the court that factual issues presented are identical to those argued before and decided by the Chancery Court. That court expressly found that plaintiff was not entitled to a hearing (and hence that her right to due process had not been violated by the conduct of a hearing in her absence) both because she had voluntarily relinquished her employment and abandoned her job well before the date of the scheduled hearing and also because she had failed to comply with her obligation under § 37-9-109 to timely provide the district with her response to its reasons for non-renewal. That court further found plaintiff's alleged right to notice of the hearing had not been violated in any event because her attorney had been informed by attorney John Compton on May 7 that the hearing would be conducted on May 10, as originally scheduled. That court's resolution of these issues was essential to the court's conclusion that defendant's non-renewal was lawful, and the issues therefore may not be relitigated in this case.

For these reasons, it is ordered that defendants' motion for summary judgment is granted.

A separate judgment will be entered in accordance with Rule 56 of the Federal Rules of Civil Procedure.

SO ORDERED this 15<sup>th</sup> day of August, 2006.

/s/ Tom S. Lee

UNITED STATES DISTRICT JUDGE